



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/816,202	03/31/2004	Ajay Pratap Singh Kushwah	LEGAP024	7502

21912 7590 10/10/2006

VAN PELT, YI & JAMES LLP
10050 N. FOOTHILL BLVD #200
CUPERTINO, CA 95014

EXAMINER

ORTIZ, BELIX M

ART UNIT PAPER NUMBER

2164

DATE MAILED: 10/10/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/816,202

Applicant(s)

KUSHWAH ET AL.

Examiner

Belix M. Ortiz

Art Unit

2164

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 31 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Specification

1. The following guidelines illustrate the preferred layout for the specification of a utility application. These guidelines are suggested for the applicant's use.

Arrangement of the Specification

As provided in 37 CFR 1.77(b), the specification of a utility application should include the following sections in order. Each of the lettered items should appear in upper case, without underlining or bold type, as a section heading. If no text follows the section heading, the phrase "Not Applicable" should follow the section heading:

- (a) TITLE OF THE INVENTION.
- (b) CROSS-REFERENCE TO RELATED APPLICATIONS.
- (c) STATEMENT REGARDING FEDERALLY SPONSORED RESEARCH OR DEVELOPMENT.
- (d) THE NAMES OF THE PARTIES TO A JOINT RESEARCH AGREEMENT.
- (e) INCORPORATION-BY-REFERENCE OF MATERIAL SUBMITTED ON A COMPACT DISC.
- (f) BACKGROUND OF THE INVENTION.
 - (1) Field of the Invention.
 - (2) Description of Related Art including information disclosed under 37 CFR 1.97 and 1.98.
- (g) BRIEF SUMMARY OF THE INVENTION.
- (h) BRIEF DESCRIPTION OF THE SEVERAL VIEWS OF THE DRAWING(S).
- (i) DETAILED DESCRIPTION OF THE INVENTION.
- (j) CLAIM OR CLAIMS (commencing on a separate sheet).
- (k) ABSTRACT OF THE DISCLOSURE (commencing on a separate sheet).
- (l) SEQUENCE LISTING (See MPEP § 2424 and 37 CFR 1.821-1.825. A "Sequence Listing" is required on paper if the application discloses a nucleotide or amino acid sequence as defined in 37 CFR 1.821(a) and if the required "Sequence Listing" is not submitted as an electronic document on compact disc).

2. The section "Brief summary of the invention" is missing on this specification.

3. The abstract of the disclosure is objected to because, of the following

reason:

The abstract should have a range of 50 to 150 words.

4. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

Claim Rejections - 35 USC § 112

5. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

6. Claims 12 and 19 rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Claims 12 and 19 recite "unique key" and "key", which is subject matter which was not described on the specification.

7. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

8. Claims 2-8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 2 and 3 recites the limitation "the first category or the second category" in line 2 of each claim. There is insufficient antecedent basis for this limitation in the claim.

Claims 5-8 recites the limitation "the first category" in line 1 of each claim. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 101

9. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

10. Claims 1 and 20-21 are rejected under 35 U.S.C. 101 because we have held that the claimed subject matter does not fall within the definition of a "process" under § 101 and is an "abstract idea," and, therefore, it is not a "practical application" of the plan because it does not produce a "concrete and tangible result". The State Street test requires that subject matter be "useful" and "concrete" and "tangible". While the claimed subject matter may be "useful" because it has some utility to society, this is not enough. Therefore, we hold that claims 1-30 are directed to nonstatutory subject matter because they do not recite a "practical application" or produce a "concrete and tangible result" under State Street.

See, *State Street*, 149 F.3d at 1374-75, 47 USPQ2d at 1602 (Fed.Cir. 1998); *In re Toma*, 575 F.2d 872, 877-78, 197 USPQ 852, 857 (CCPA 1978); *In re Musgrave*, 431 F.2d 882, 893, 167 USPQ 280, 289-90 (CCPA 1970). See also *In re Schrader*, 22 F.3d 290, 297-98, 30 USPQ2d 1455, 1461-62 (Fed. Cir. 1994) (Newman, J., dissenting); *Paine, Webber, Jackson & Curtis, Inc. v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 564 F. Supp. 1358, 1368-69, 218 USPQ 212, 220 (D. Del. 1983).

Regarding claims 2-19 are rejected under 35 U.S.C. 101, as being dependent from rejected independent claims 1.

Claim Rejections - 35 USC § 102

11. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

12. Claims 1-21 are rejected under 35 U.S.C. 102(e) (Eff. Filing date of application: 3/31/2004) as being anticipated by Prahlad et al. (U.S. Pub. 2005/0187992) (Eff. Filing date of provisional application: 11/13/2003)

Art Unit: 2164

As to claims 1 and 21, Prahlad et al. teaches a method for identifying a file system element for restoration (see abstract) comprising:

receiving a request to restore a file system element (see paragraphs 18 and 56);

determining an offset of a record associated with the file system element (see figure 4 and paragraphs 14 and 50); and

retrieving information associated with the record (see paragraphs 14, 36, and 60).

As to claim 2, Prahlad et al. teaches the method further comprising determining whether the file system element is associated with the first category or the second category (see paragraphs 14, 16-17, and 26).

As to claim 3, Prahlad et al. teaches wherein a most significant bit indicates whether the file system element is associated with the first category or the second category (see paragraphs 14-16).

As to claim 4, Prahlad et al. teaches wherein the most significant bit is stored in a table (see paragraph 15).

As to claim 5-8, 15-16, Prahlad et al. teaches wherein the first category is a file, a file metadata file, a directory, a directory metadata file (see figure 4 and paragraph 14)

Art Unit: 2164

As to claim 9, Prahlad et al. teaches wherein the information retrieved is metadata associated with the file system element (see paragraph 41).

As to claim 10, Prahlad et al. teaches wherein the metadata includes administrative information (see paragraph 41).

As to claim 11, Prahlad et al. teaches wherein the metadata includes permissions (see paragraph 41).

As to claim 12, Prahlad et al. teaches wherein the metadata includes a unique key associated with the file system element (see paragraph 41).

As to claim 13, Prahlad et al. teaches wherein the information retrieved is metadata associated with a second record, and wherein the second record is associated with the file system element (see abstract).

As to claim 14, Prahlad et al. teaches wherein the offset is stored in a table (see paragraph 15 and figure 4).

As to claim 17, Prahlad et al. teaches the method further comprising determining a second offset of a second record associated with the record (see figure 4 and paragraphs 14 and 50).

As to claim 18, Prahlad et al. teaches wherein the association of the record with the file system element occurs via an inode (see figure 4, character 356).

As to claim 19, Prahlad et al. teaches wherein the association of the record with the file system element occurs via a key (see figure 4).

As to claim 20, Prahlad et al. teaches a system for identifying a file system element for restoration comprising:

a processor configured to receiving a request to restore a file system element (see paragraphs 18 and 56);

determining an offset of a record associated with the file system element(see figure 4 and paragraphs 14 and 50); and

retrieving information associated with the record (see paragraphs 14, 36, and 60); and

a memory coupled to the processor, wherein the memory provides instructions (see paragraph 43).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Belix M. Ortiz whose telephone number is 571-272-4081. The examiner can normally be reached on moday-friday 9am-5pm.

The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 2164

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

bmo

September 29, 2006



CHARLES RONES
SUPERVISORY PATENT EXAMINER